

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13041 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

=====

MAHADEV BABURAV MARATHI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

=====

Appearance :

MR ARVIND K THAKUR for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

=====

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/09/2006

ORAL JUDGMENT

1.Shri Mahadev Baburav Marathi, petitioner-detenu has filed this petition under Article 226 of the Constitution of India challenging the order of detention dated 23/02/2006 passed by the Commissioner of Police, Ahmedabad City in purported exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

2. Learned Advocate for the petitioner has invited my

attention to the order of detention dated 23.02.2006 by which petitioner-detenu was arrested and sent to Surat Jail, Surat as well as to the grounds supplied by the detaining authority, therein. As the grounds of detention, it is stated that the petitioner in association with his associates possessed, stored and sold Indian liquor on a large scale in the area.

3. He has further submitted that in the order of detention it was stated that the petitioner-detenu is carrying on anti-social activities and on the basis of five criminal cases registered against the petitioner-detenu, he was termed as 'Bootlegger' within the meaning of Section 2(b) of the P.A.S.A. Act. It was also stated in the impugned order that as the said bootlegging activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed against him.

4. It has been also alleged that petitioner-detenu is carrying business of illegal, illicit country made liquor and therefore it affects the public health in this behalf. He is manufacturing country liquor, selling, transporting and storing the same and in all criminal cases, he has been released on bail and therefore it is not possible to deal with the Trial

Court and therefore, the authority has passed an order of detention under Section 2 of Section 3 of PASA Act. It was also stated that it will be open for the petitioner-detenu to make representation in this behalf. The learned counsel for the petitioner-detenu has invited my attention to the representation dated 29/06/2006.

5. Though there are five offences against the petitioner-detenu wherein it is alleged that, petitioner-detenu is 'bootlegger' within the meaning of PASA Act, the learned counsel for the petitioner-detenu has submitted that the authority has passed the order of detention on the basis of the fact that petitioner-detenu is manufacturing liquor and he has storing raw material for the manufacturing of country liquor and he is also transporting and selling the liquor in this behalf. The learned counsel has also submitted that storing of arrack (raw material of country liquor) would not become activities prejudicial to the maintenance of public order because the same can be dealt with under the provisions of ordinary prohibition Act and if raw material, arrack of country liquor sold by the detenu, his activities does not affect the public health. It is further submitted that the petitioner has not been supplied with the documents demanded in the representation namely the FSL report as the same was

relevant for the purpose of making an effective representation.

6.I have considered all the rival submissions and relevant materials in this behalf. However, in my view, the contention of learned advocate for the petitioner is acceptable that mere strength and number of incidents are not sufficient to prove that the activities of the detenu of manufacturing, storing, transporting and selling illicit liquor is prejudicial to public order.

7.In support of the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 Sc 491 and recent judgment of the Hon'ble Supreme Court in the case of District Collector Ananthapur and another v. V.Laxmanna, reported in 2005 (3) SCC 663 wherein in para 7, the Hon'ble Supreme Court has observed that:

"We do not think that this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale or arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to

it that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation."

8. On the other hand, learned APP has stated that if there are five cases of prohibition, then this Court can come to the conclusion that the activities of the detenu is prejudicial to the maintenance of public order therefore, the detention order must be upheld. He has also relied upon affidavit filed by the authority. In the affidavit, it has been stated that contention raised by the petitioner has been taken by the respondent in this behalf. It is further submitted that the authority has considered all the grounds and has produced enough material and there are instruments which has been seized which are used for manufacturing liquor.

9. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on

simple facts about registration of crime. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality.

10. In view of the recent judgment of the Hon'ble Apex Court in the case of District Collector v. V. Laxmanna (supra), which the learned advocate for the petitioner cited and relied upon, in my view, detention order on the ground that detenu is indulging in manufacturing or transporting or selling of arrack-country liquor then that by itself would not become an activity prejudicial to the maintenance of public order but action under ordinary law namely prohibition law or other can be initiated. In view of the judgment of the Hon'ble Apex Court, the authority must allege that the country liquor sold by the detenu is injurious to the public health and further that carrying on such activity is prejudicial to the maintenance of public order. The authority must show FSL report or report of chemical examiner which shows that the country liquor which has been manufactured is injurious to health and prejudicial to the public health and copy of such

material should also be given to the detenu to afford him to make an effective representation.

11.As the authority has failed and neglect to produce such material, in my view, the detention order is liable to be quashed and set aside only on that ground.

12.In the result, petition is allowed. The impugned order of continued detention dated 23.02.2006 against the detenu is quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.S. JHAVERI, J.)

Divya//